

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

UNITED STATES OF AMERICA)	
)	CRIMINAL ACTION NO.
v.)	2:21cr98-MHT
)	(WO)
CAESAR JAY LEAL, JR.)	

OPINION AND ORDER

This cause is before the court on the joint motion to continue trial filed by the government and defendant Caesar Jay Leal, Jr. For the reasons set forth below, the court finds that jury selection and trial, now set for January 3, 2023, should be continued pursuant to 18 U.S.C. § 3161(h).

While the granting of a continuance is left to the discretion of the trial judge, *see United States v. Stitzer*, 785 F.2d 1506, 1516 (11th Cir. 1986), the court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public)

of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."

§ 3161(c)(1). The Act excludes from the 70-day period "[a]ny period of delay resulting from the ... unavailability of ... an essential witness."

§ 3161(4)(3). It also excludes "any period of delay resulting from a continuance [that is granted based on] ... findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." § 3161(h)(7)(A). In granting such a continuance, the court may consider, among other factors, whether the failure to grant the continuance "would be likely to ... result in a miscarriage of justice," § 3161(h)(7)(B)(i).

The court concludes that, in this case, a continuance is warranted because two government witnesses are unavailable during the trial term and the ends of justice served by granting a continuance outweigh the interest of the public and Leal in a speedy trial. The government represents that the two

witnesses are necessary to their case, and the court so finds. The witnesses are unavailable because they are scheduled to attend other trials. Without the two unavailable witnesses, the government would be seriously hindered in putting on its case. It is in the interest of justice that the government have an opportunity to present its necessary evidence to the jury.

Accordingly, it is ORDERED as follows:

(1) The joint motion to continue trial (Doc. 239) is granted.

(2) The jury selection and trial, previously set for January 3, 2023, are reset for March 13, 2023, at 10:00 a.m., in Courtroom 2FMJ of the Frank M. Johnson Jr. United States Courthouse Complex, One Church Street, Montgomery, Alabama.

DONE, this the 1st day of December, 2022.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE